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November 17, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re/ application of Shian-Jiun Shih, Karen R. McGlennon,
and Dewey Moody
Application No. 09/763,210
Filed October 16, 2001

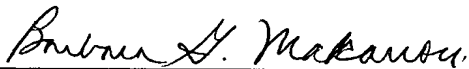
Examiner D.T. Nguyen
Art Unit 1632

Adenovirus Formulations for Gene Therapy

(Atty. Docket No. P27,073 USA)

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on Monday, November 17, 2003.


Barbara G. Makariou

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**Reply to Examiner's Requirement for Restriction
Election, As Set Forth in the Action Dated June 17, 2003**

Sir:

In response to the Examiner's Requirement for Restriction, as set forth in the Action dated June 17, 2003, applicants hereby elect to prosecute the claims of Group

I, that is, Claims 1 to 31. Applicants confirm their right to file a divisional application which includes the non-elected claims (Claims 32 and 33).

The Office Action includes also an additional requirement of species election to which the elected claims must be restricted. Applicants hereby elect species (a), a specifically claimed concentration of human serum albumin (HSA) as listed in Claims 2 to 5, for example.

Applicants traverse respectfully the Restriction Requirement.

The Examiner's attention is directed to MPEP §803, which states (emphasis added):

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP §§ 802.01, §§ 806.04, §§ 808.01) or distinct as claimed (see MPEP §§ 806.05 - §§ 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP §§ 803.02, §§ 806.04(a) - §§ 806.04(i), §§ 808.01(a), and §§ 808.02).

Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the restriction requirement in most cases.

Applicants respectfully submit that the Examiner's Action does not explain why it would be "a serious burden" for the Examiner to perform a search and examination of the application in its entirety. Accordingly, the Examiner's Requirement does not satisfy an essential criteria for a proper Requirement for Restriction, as set forth in the MPEP.

Furthermore, applicants respectfully submit that it would not be a serious burden for the Examiner to search and examine the application in its entirety. All of the claims of the present application share a major common element. This common element is a composition effective for stabilization of adenoviral vectors. Since this common element is shared by the claims of Groups I and II, it would not be a serious burden for the Examiner to search and examine the claims of Groups I and II.

In view of the above, applicants request respectfully that the Examiner withdraw the Restriction Requirement.

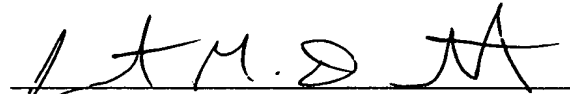
A favorable action on the merits is requested respectfully. A Petition for a four-

In re Application of Shian-Jiun Shih, et al.
Application No. 09/763,210

S&L File No. P27,073 USA
November 17, 2003
Page 4

month extension of time to respond to the Action is enclosed also.

Respectfully submitted,


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